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10/534,516

10/10/2006

Bodo W. Lambertz

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OLSON & HIERL, LTD.

20 NORTH WACKER DRIVE

36TH FLOOR

CHICAGO, IL 60606

EXAMINER

SOLD, JENA A

ART UNIT

PAPER NUMBER

3765

| SHORTENED STATUTORY PERIOD OF RESPONSE | MAIL DATE | DELIVERY MODE |
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3 MONTHS

04/02/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/534,516

Applicant(s)

LAMBERTZ, BODO W.

Examiner

Jena A. Sold

Art Unit

3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 May 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the X-cross bandage (claims 9, 16, and 20) must be shown or the feature canceled from the claims. No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

2. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

The following title is suggested: Sock having Achilles Tendon Protection

3. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Applicant claims "the transition piece is produced from climate-regulating fabric" (claims 4 and 5). However, in the specification, applicant discloses the X-cross bandage and the air channel made of climate-regulating fabric (para. 16 and 17) but fails to discuss the transition piece as comprising climate-regulating fabric (para. 15).

Claim Objections

4. Examiner request applicant removes the reference numbers from claims 1-8, 10-15, and 17-20.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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5. Claims 1, 6, 8, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Etienne (U.S. 4,811,727). Etienne discloses a therapeutic support stocking, present applicant's sock, including a means of support for the Achilles tendon comprising two pads 11, 12, present applicant's two spacer cushion pads, which are bean-shaped and fill up the retro-malleolar cavity 12, 13 on either side of the body 14 of the Achilles tendon (column 4, lines 42-45).

6. Regarding claim 6, Etienne additionally discloses pads 10, 11 fit closely into the anatomy of the two depressions (column 4, lines 50-51) and are, thus, adjusted to the anatomical shape of the foot in the area of the Achilles tendon.

7. Regarding claim 8, Etienne discloses chamfered heel-piece 15, present applicant's additional cushion pad.

8. Regarding claim 10, Etienne discloses ventilation and traction eyelets 17, 18, present applicant's air channel, on the top and bottom lateral parts of the leg segments 19.

9. Claims 1-3, 6, and 11-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Haanen (DE 25 47 809). Haanen discloses an ankle protector sock for football players comprising cylindrical cushions 2, 3, present applicant's spacer cushion pads, which lie between the ankle bone and the Achilles tendon on both sides, as visible in Figures 3 and 4 (page 3, para. 1)

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10. Regarding claim 2, Hanaan additionally discloses cushion pads 2, 3 are connected by a bridge piece, present applicant's transition piece, made of elastic material (page 3, para. 2 and 3).

11. Regarding claim 3, as visible in Figures 3 and 4, bridge piece 6 is a cushion pad having a smaller thickness than the spacer cushion pads.

12. Regarding claims 6, 11, and 12, cushion pads 2,3 are conformed to fit between the ankle bone and the Achilles tendon and the height is such to embrace the Achilles tendon (page 3, para. 1).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 4-5, 7-10, and 13-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haanen (DE 25 47 809) in view of Lambertz (U.S. 6286151).

Haanen discloses the invention substantially as claimed and as previously discussed including a sock having cylindrical cushions on either side of the Achilles tendon, as well as a transition piece comprising a cushion having a smaller thickness than said cylindrical cushions. Haanen, however, fails to disclose any additional features of the sock or the padding.

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14. Regarding claims 4 and 5, Haanen fails to disclose the transition or bridge cushion comprising climate-adjusting fabric. Lambertz teaches a heat-regulating sock for use during sport activities comprising, in part, a padded cushion 7 over the Achilles tendon, wherein said padded cushion comprises climate-adjusting fabric (column 2, lines 42-46). Thus, it would have been obvious to one having ordinary skill in the art at the time of the invention to construct the bridge piece of Haanen, the portion covering the Achilles tendon, from climate-adjusting fabric, as taught by Lambertz, because climate-adjusting fabric serves to air the skin and transport moisture of the sweat away (column 1, lines 43-45).

15. Regarding claims 7 and 14, Haanen discloses pads 2, 3 may comprise a plastic material, but fails to explicitly disclose said pads comprising internally hollow fibers, surrounded by wool or cotton. Lambertz discloses the sock paddings consisting of hollow-core fibers coated with threads of wool or cotton. Thus, it would have been obvious to one having ordinary skill in the art at the time of the invention to construct the pads of Haanen out of a plastic material having internally hollow fibers and surrounded by wool or cotton, because hollow-core plastic threads are particularly effective in damping shocks and pressure (column 3, lines 18-22).

16. Regarding claims 8, 15 and 19, Haanen fails to disclose the sock provided with additional cushion pads. Lambertz discloses padded instep cushion 5 and padded shin cushion 6 (column 2, lines 34-38)

17. Regarding claims 9, 16, and 20, Haanen fails to disclose the sports sock having additional ankle support, specifically an X-cross bandage. Lambertz teaches sock 1

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having an X-cross support band 9. Thus, it would have been obvious to one having ordinary skill in the art at the time of the invention to provide said X-cross support band, as taught by Lambertz, to the sports sock of Haanen, because said band offers support to the ankle joint, the transitional area between the leg and the foot (column 2, lines 53-57). Thus, it would have been obvious to one having ordinary skill in the art at the time of the invention to provide the sports sock of Haanen with additional padded cushions, as taught by Lambertz, because the additional cushioning protects the shin area during sport activities and reduces stresses and pressure points on the foot (column 1, lines 40-42).

18. Regarding claim 13, as previously discussed, cushion pads 2,3 are conformed to fit between the ankle bone and the Achilles tendon and the height is such to embrace the Achilles tendon (page 3, para. 1), thus adjusted to the anatomical shape of the foot in the area of the Achilles tendon.

19. Regarding claims 17-18, Haanen additionally fails to disclose said sports sock having an air channel. Lambertz teaches said heat-regulating sock for use during sport activities comprising at least 1 integrated airway 3 extending from the sole 2 to the top of the sock, wherein the airway 3 consists of climate-regulating netted fabric (Abstract). Thus, it would have been obvious to one having ordinary skill in the art at the time of the invention to provide the sports sock of Haanen with climate-regulating netted fabric forming an air channel in said sock, as taught by Lambertz, because through said air channel, moisture is drawn upward from the area of the sole of the foot, thus cooling the foot and keeping the foot dry (column 2, lines 30-31).

Conclusion

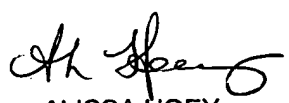
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure and is cited on form 892 enclosed herewith.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jena A. Sold whose telephone number is (571) 272-8610. The examiner can normally be reached on Mon. - Fri. 9:00 A.M. to 5:00 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on (571) 272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JAS


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